

MAR 15 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

**JOSE MANUEL GUTIERREZ-
CISNEROS,**

Defendant - Appellant.

No. 05-50196

D.C. No. CR-04-01242-IEG

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Argued and Submitted February 9, 2006
Pasadena, California

Before: **KOZINSKI, TROTT** and **BEA**, Circuit Judges.

Appellant, Jose Manuel Gutierrez-Cisneros, appeals his conviction, arguing that the district court abused its discretion when it improperly admitted two pawn slips and allowed the government to argue facts not in evidence during closing argument. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

The district court properly exercised its discretion by admitting the pawn slips into evidence. The pawn slips were not poverty evidence but circumstantial evidence used to corroborate Gutierrez-Cisneros's statements to law enforcement. His testimony on direct examination that he did not expect to be paid cash for moving marijuana across the border and his testimony on cross examination that he lied about needing cash tended to show that he did not know there was marijuana in the car. His admission to law enforcement that he "needed the cash" tended to show he did know of the marijuana. His failure to redeem his pawned goods is consistent with and buttresses the credibility of the admission that he "needed the cash." Accordingly, the pawn slips were not poverty evidence because they were not admitted to "show the mere fact that the defendant [wa]s poor." See United States v. Romero-Avila, 210 F.3d 1017, 1022 (9th Cir. 2000) (internal citations and quotation marks omitted).

The prosecutor's statement that Gutierrez-Cisneros "tried to get away" was a reasonable inference from the evidence. See United States v. Hermanek, 289 F.3d 1076, 1100 (9th Cir. 2002). The arresting officer testified that Gutierrez-Cisneros "resisted" going to the security office, that he "put up a little struggle," and that as a result of the resistance, another officer came to help remove Gutierrez-Cisneros.

Thus, the prosecutor's statement that Gutierrez-Cisneros "tried to get away" was reasonable.

AFFIRMED.